IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO.252 OF 2000

1. Special Land Acquisition Officer
(South Goa) Konkan Railway
Corporation Limited,
Amey Guest House,
Davorlim Road,
P.O. Navelim,
Salcete Goa, 403 707.

2. Chief Engineer,
Konkan Railway Corporation Ltd.,
Rawnfond,
near Margao Railway Station,
Margao Goa. ... Appellants.

V/s

1. Francisco Leandro Fernandes,
Tembowada, Palolem,
Canacona, Goa. ... Respondent.

Mr. E. Afonso, Advocate for the appellants.

Mr. P.A. Kamat, Advocate for the respondent.

CORAM: A.P. LAVANDE, J.

DATE: 20TH APRIL, 2005.

ORAL JUDGMENT

The appellants challenge the judgment and award dated 25.8.2000 passed by the Additional District Judge, South Goa,

Margao in Land Acquisition No.140/95.

2. By Notification dated 24.7.1991 issued under Section 4 of the Land Acquisition Act (the Act for short) the Government acquired for Konkan Railway Corporation Ltd. large chunks of land situated at Nagarcem - Palolem at Canacona. Property bearing survey no.196/2 (Part) admeasuring 1500 square meters belonging to the respondent Francisco Fernandes, the original applicant before the reference Court, was part of the acquired land. The said land was paddy field. The Special Land Acquisition Officer by his award dated 9.12.1993 awarded Rs.9/- for the acquired land. Aggrieved by the said award, the original applicant sought reference under Section 18 of the Land Acquisition Act and claimed compensation of Rs.120/- per square meter. The reference Court relying upon the Sale Deed dated 7.6.1990 (Exhibit AW2/B) by which the original applicant sold part of the land bearing survey no.196/2 to Shri Sudesh Raikar fixed the compensation in respect of the acquired land at the rate of Rs.26/- by giving 10%, increase per year from the date of the Sale Deed i.e. 7.6.1990 (Exhibit AW2/B).

3. Mr. Afonso, learned Counsel appearing for the appellants

submitted that the reference Court ought not to have relied upon the Sale Deed dated 7.6.1990 (Exhibit AW2/B) and that in any case the reference Court ought not to have granted increase of 10% per year since the acquired land was paddy field having no building potential. The learned Counsel further submitted that the original applicant had neither led any evidence of any development during the years preceding Section 4 Notification nor led any evidence to prove that the prices of paddy fields increased by 10% every year.

4. Per contra, Mr. Kamat appearing for the respondents submitted that the reference Court was absolutely justified in placing reliance on the Sale Deed dated 7.6.1990 (Exhibit AW2/B) since it was in respect of the remaining portion of the same property bearing survey no.196/2. The learned Counsel further submitted that the Apex Court has consistently held that increase of 10% has to be granted in fixing the market rate.

5. I have considered the submissions made by the learned Counsel appearing for the parties. Since the Sale Deed dated 7.6.1990 (Exhibit AW2/B) was in respect of the remaining portion of the same property bearing survey no.196/2, in my

opinion, the reference Court was absolutely justified in relying upon the said Sale Deed dated 7.6.1990 (Exhibit AW2/B) and fix the market value of the acquired land as on 7.6.1990 at Rs.33.33 per square meter which was the consideration mentioned in the said Sale Deed. In so far as the increase of 10% per year granted by the reference Court, I have already held in a number of connected appeals that having regard to the fact that the acquired land is a paddy field and situated at Nagarcem Palolem in Canacona Taluka and also having regard to the fact there is absolutely no evidence led about any development around the acquired land during the years preceding Section 4 Notification, increase of 5% and not 10% per year would be justified. Accordingly, by giving increase of 5% every year the market rate of the acquired land works out to 34.99. I deem it appropriate to round it up to Rs.35/- per square meter. Accordingly I hold that the compensation payable in respect of the acquired land is Rs.35/- per square meter. Needless to mention that the respondents are entitled to all the statutory benefits under the Act.

6. In view of the above discussion, the appeal is partly allowed. Having regard to the facts and circumstances of the

case, the parties are directed to bear their own costs.

A.P. LAVANDE, J.

ef.